



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Bangerter
Governor

Dee C. Hansen
Executive Director

Dianne R. Nielson, Ph.D.
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

February 25, 1992

TO: Dianne R. Nielson, Director

FROM: Lowell P. Braxton, Associate Director, Mining *LAB*

RE: Pattern of Violations Determination, Co-Op Mining Company, Bear Canyon Mine, ACT/015/025, Emery County, Utah

Attached please find a copy of the Division's Pattern of Violations (POV) procedure. A POV review conducted in January, 1992 substantiates three same or similar violations for Bear Canyon within a 12-month period, all three of the violations having been upheld.

Section 5b of the POV policy requires the Associate Director to provide written recommendation to the Director regarding unwarranted or willful failure to comply. Attached please find Joseph C. Helfrich's July 25, 1991, memo substantiating 20 or more points of greater degree of fault having been awarded to each of the following violations: N91-35-1-1, N91-20-1-1, N91-26-7-2 (2 of 2). This assessment of degree of fault was not changed on any of the violations upon finalization. (The last, N91-20-1-1 having been finalized January 20, 1992.)

This degree of fault should be considered in determining if there has been an unwarranted or willful failure to comply. Per Section 5c of the POV procedure, a review of this potential pattern by an Assistant Attorney General is requested.

Please advise if additional information is required.

vb
Attachments
cc: J. Helfrich
pov



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

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May 1, 1986

TO: Mining Staff

FROM: Dianne R. Nielson, Director *DRN*

RE: Procedure for Determination of Pattern of Violations

The following procedure will be followed to review listings of violations, identify potential patterns, and make determinations concerning patterns of violations.

1. Tracking System Data Entry

Office specialist for coal-field inspection data will enter and update data from field inspections on a regular basis for the NOV/CO tracking system. Data entry will include:

- NOV #
- type of violation
- date issued
- inspector
- status of the assessment (proposed, final)
- level of appeal

2. Review of Tracking System Printout

- a. Compliance Coordinator and Associate Director will establish a list of similar violations for pattern-review purposes.
- b. Compliance Coordinator will review the PATTERN tracking system on a monthly basis and note all operations with three-or-more same or similar violations during the previous 12-month period, based on the date the violation was issued. At this point, it is recognized that some of the violations may not have been finalized through the assessment process.
- c. After meeting with the Field Specialist and Permit Supervisor responsible for the subject mining operation, the Compliance Coordinator will prepare a

memorandum entitled Tracking System Review for the
Month of , 19 , to the Associate Director,
summarizing his findings. The memorandum will include:

- operator
- listing of same or similar violations
- nature of the violations
- issue dates
- dates finalized or status of appeals process

3. Initial Determination of Three-or-More Violations

- a. Compliance Coordinator and Associate Director will meet on a monthly basis, if necessary, to review listings on the memorandum. Associate Director, with assistance of Compliance Coordinator, will determine if the information supports a determination of "three same or similar violations within a 12-month period."
- b. The determination will be based on issuance date, not finalized assessment date. If the violation is later vacated, it will not be considered in the listing.
- c. Associate Director will prepare a memorandum entitled Operators with Three-or-More Same or Similar Violations During a 12-Month Period to the file, summarizing their determinations, with copies to:
 - OSM Albuquerque Field Office
 - DOGM Director
 - Compliance Coordinator

4. Finalized Assessments

No further action will be taken concerning a review of the pattern status until all subject violations have been finalized, either through notification to the operator with no response within 30 days, or through the assessment conference or Board hearing.

5. Recommendation on "Unwarranted or Willful Failure to Comply"

- a. If subject violations are sustained through the final assessment such that a potential pattern still exists,

the Associate Director and the Compliance Coordinator will review each violation regarding "unwarranted or willful failure to comply."

- b. Associate Director will prepare a memorandum entitled Review of Violations for Unwarranted or Willful Failure to Comply, to the Director, indicating whether or not each violation is deemed to represent an unwarranted or willful failure to comply and, hence, whether a potential pattern of violations is deemed to exist.
- c. The Director will request that the Assistant Attorney General review the memorandum and provide comments to the Director.
- d. If the Director concurs with or determines, based on this memorandum, the Assistant Attorney General's comments, and the supporting data, that a potential pattern does not exist, the Director will finalize the review with a cover memorandum to the file with supporting material attached. This memorandum will be copied to the:

- OSM Albuquerque Field Office
- Associate Director
- Compliance Coordinator

6. Notification of Potential Pattern Informal Conference

- a. If the Director concurs with or determines, based on the Associate Director's memorandum, the Assistant Attorney General's comments, and the supporting data, that a potential pattern does exist, the Director will prepare a memorandum summarizing this, with attached, supporting material. The memorandum to file will be copied to:

- OSM Albuquerque Field Office
- Associate Director
- Assistant Attorney General
- Compliance Coordinator

- b. The operator will be notified by letter that he has incurred three-or-more violations during a 12-month period and that the potential exists for a pattern of violations. The operator will be given an opportunity

to request, within 30 days, an informal conference with the Division to discuss the "unwarranted or willful failure to comply" nature of the violations. The conference will be chaired by the Director. Copies of this letter will go to:

- OSM Albuquerque Field Office
- Associate Director
- Assistant Attorney General
- Compliance Coordinator
- file

7. Pattern of Violations

- a. If the conference is not requested within 30 days, the Director will make a determination without benefit of a conference.
- b. If the conference is held, the Director will consider information from the conference and make a determination as to whether a pattern of violations exists.
- c. The Director will notify the operation of the findings. Copies of the letter will be sent to:
 - OSM Albuquerque Field Office
 - Associate Director
 - Assistant Attorney General
 - Compliance Coordinator
 - file
- d. If a finding of "no pattern of violations" is made, there will be no further action.
- e. If a finding of "existence of a pattern of violations" is made, the Division will petition the Board of Oil, Gas and Mining for an order to show cause as to why the permit should not be suspended or revoked.

8. Board Hearing

- a. The Board will handle the Division's petition in accordance with its procedural rules.

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Pattern of Violations Procedure
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- d. If a consent order is reached prior to the hearing, the terms and conditions of the consent order will become a matter of public record.
- c. If the hearing is conducted before the Board, the testimony and order of the Board will be a matter of public record. The provisions of the Board order will be carried out by the Division, as applicable.

9. Review of Past Patterns of Violations - Statute of Limitations

- a. The above procedure will be expeditiously pursued for a review of past violations which may not have been reviewed.
- b. The statute of limitation for the Division determination of a pattern of violations is two years, based on Section 40-8-9(4), Utah Code Annotated. This means that the Division's finding must be made before the most recent of the violations comprising a pattern is two years old, based on the date of issuance of the violation.

jb
cc: R. H. Hagen
Board of Oil, Gas & Mining
R. W. Daniels
M. C. Moench
B. W. Roberts
0550V-1-5

ACT-015-025

12/01/90 - 01/01/92

ASSESSMENT	NOV/CO#	ISSUED DATE	VIOLATION TYPE	
Proposed FINALIZED CC	* NOV N91-35-1-1 - PAID 6/21/91	02/27/91	L	Other
	* NOV N91-26-4-3 - PAID 1/20/92	04/19/91	L	Other
	* HV N91-20-1-1 - 1/20/92	04/26/91	L	Other
	NOV N91-34-2-1 - 1/1	05/20/91	L	Other
Proposed	* NOV N91-26-7-2 - 10/25/91	07/02/91	L	Other
Final	* NOV N91-26-7-2 - PAID (2/2) 11	07/02/91	L	Other
	NOV N91-40-1-1 - 1/1	11/15/91	L	Other
	NOV N91-35-8-1 - 1/1	12/04/91	L	Other
Proposed	NOV N91-40-2-2 - 2/2	12/19/91	L	Other

pending
ag. concurrence
of court
failure to comply
* 9

LOWELL:

91-35-1-1 - PAID 6/21/91
91-20-1-1 FINALIZED + 1/20/92
DUE
91-26-7-2 #2 PAID 10/25/91